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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------------|------------------|
| 10/634,166 | 08/05/2003 | Julian Crawford | 035470.00001 | 6335 |
| 7590 05/10/2006 | | | | |
| Henry S. Jaudon McNair Law Firm, P.A. P.O. Box 10827 Greenville, SC 29601 | | | EXAMINER BRUENJES, CHRISTOPHER P | |
| | | | ART UNIT 1772 | PAPER NUMBER |

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|---|--|---|--|
| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/634,166 | Applicant(s) CRAWFORD, JULIAN | |
| | Examiner Christopher P. Bruenjes | Art Unit 1772 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: none.
 Claim(s) objected to: none.
 Claim(s) rejected: 8-15.
 Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

Applicant's amendments will be entered for purposes of appeal since the limitations added in the proposed amendment were presented and discussed earlier and as such present no new issues but serve to make the claim definite.

WITHDRAWN REJECTIONS

The 35 U.S.C. 112 rejections of claims 8-15 of record in the office Action mailed April 6, 2006, Pages 2-3 Paragraph 3, would be withdrawn when this amendment is entered for purposes of appeal.

REPEATED REJECTIONS

The 35 U.S.C. 102 rejections of claims 8-12 and 14 as anticipated by O'Neil are repeated for the reasons set forth in the previous Office Action mailed December 28, 2005, Pages 3-6 Paragraph 7.

The 35 U.S.C. 103 rejections of claims 13 and 15 over O'Neil are repeated for the reasons set forth in the previous Office Action mailed December 28, 2005, Pages 7-8 Paragraph 10.

Art Unit: 1772

ANSWERS TO APPLICANT'S ARGUMENTS

Applicant's arguments regarding the 35 U.S.C. 112 rejections of claims 8-15 of record have been considered but they are moot since the rejections are withdrawn in light of the proposed amendment.

Applicant's arguments regarding the 35 U.S.C. 102 and 103 rejections of claims 8-15 over O'Neil have been fully considered but they are not persuasive.

In response to Applicant's argument that the thermoplastic twine of O'Neil is not a tubular fabric, as stated in the previous Office Actions the twine of O'Neil as shown in the drawings has longitudinal filaments that are aligned in a circular pattern around the circumference of the twine and further longitudinal filaments aligned within the filaments on the outer surface of the twine. A hollow cylindrical body or tubular article is still tubular regardless of whether something is filling the hollow space, in the same manner that a pipe or container is still considered a pipe or container when it is filled with particular filler. Therefore, in the same manner, the twine of O'Neil as described anticipates a hollow

Art Unit: 1772

cylindrical body containing longitudinal filaments within the hollow portion of the cylindrical body.

In response to Applicant's argument that the specification defines heat set as yarns drawn and heated to fix desired elongation characteristics, the specification does not provide a specific definition for the term heat set only describing that the yarns are provided with a heat set to have first elongation capabilities. The yarns or filaments of O'Neil are heat set to provide a particular twist and in so doing are heat set when that term is given its broadest reasonable interpretation. Furthermore, the heat setting of the filament to provide a particular twist would inherently provide the filament with a first elongation capability since all filaments have an elongation capability and the claims do not limit the filament to in particular elongation.

In response to Applicant's argument that O'Neil fails to teach that the elongation characteristics of the second filaments are greater than the first, O'Neil specifically teaches that the longitudinal filaments are thermoplastic and the elastic filaments are formed of rubber. Thermoplastics are known in the art to have limited elongation compared to rubber, which is known to be fully elastic. Therefore, regardless of whether or not the longitudinal filaments were heat set

Art Unit: 1772

according to a specific process, the inherent characteristics of thermoplastics and rubber would teach one of ordinary skill in the art that the rubber elastic filaments would have greater elongation capabilities than the thermoplastic longitudinal filaments.

In response to Applicant's argument that the strands of O'Neil along the perimeter of the twine cannot be considered a hollow cylindrical body since they cannot be positioned without the inner strands first being in position. The outer strands of O'Neil are bonded to the elastic filaments surrounding the outer strands so that they would be positioned with regard to those filaments. Furthermore, just because the hollow cylindrical body is flexible to the point of collapsing when a material is not placed within its walls does not mean that the hollow cylindrical body is no longer tubular. Many fabrics wrapped and bonded at their ends to form a circular shape would not have the stiffness to remain open, but would still be considered tubular because the fabric could be opened and elongated objects be placed within them so that the fabric forms a sleeve around the object. A knitted cozy for placing around a cup or beverage container is an example of a tubular fabric that collapses.

In response to Applicant's argument that the Examiner's position is based on hindsight, hindsight is not germane to the

Art Unit: 1772

issue of an anticipatory reference. When a reference contains all of the structural limitations claimed it anticipates the claim. No hindsight is required because the limitations are all taught within the reference. Hindsight is only a consideration with regard to an obviousness rejection in which hindsight is used as the basis for an obviousness statement with in the rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB *CPB*
May 8, 2006

Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

5/8/06